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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

INDEMNITY INSURANCE COMPANY OF NORTH
AMERICA,

Plaintiff,

v.

UNION PACIFIC RAILROAD COMPANY, NYK LINE
(NORTH AMERICA) INC., NIPPON YUSEN KAISHA
(NYK LINE), JAGUAR FREIGHT SERVICES, JAGUAR
FREIGHT SERVICES, INC., BJ INTERNATIONAL,
INC.

Defendants.

ECF Case

07 CV 8243 (RJH)

**UNION PACIFIC RAILROAD COMPANY'S
ANSWER AND AFFIRMATIVE DEFENSES
TO JAGUAR FREIGHT SERVICES CROSS-CLAIMS**

Defendant Union Pacific Railroad Company ("UP"), by its attorneys, Barry N. Gutterman & Associates, P.C., for its Answer and Affirmative Defenses to Jaguar Freight Services and Jaguar Freight Services, Inc.'s ("Jaguar") Cross-Claims, states as follows:

1-23. UP does not respond to paragraphs 1-23 of the Cross-Claims as such allegations are not addressed to it.

24. UP repeats and rellages its response to paragraphs 1-23 of the Cross-Claims as its response to paragraph 24.

- 25. UP denies the allegations contained in paragraph 25 of the Cross-Claims.
- 26. UP denies the allegations contained in paragraph 26 of the Cross-Claims.
- 27. UP denies the allegations contained in paragraph 27 of the Cross-Claims.

**AS AND FOR A FIRST
AFFIRMATIVE DEFENSE**

- 28. To the extent that the plaintiff and Jaguar failed to meet the minimum filing requirements of filing a proper written claim within the time prescribed, this lawsuit is time barred.

**AS AND FOR A SECOND
AFFIRMATIVE DEFENSE**

- 29. To the extent that Jaguar failed to file cross-claims within the period proscribed, their cross-claims are time barred.

**AS AND FOR A THIRD
AFFIRMATIVE DEFENSE**

- 30. The complaint and cross-claims fail to state a claim against UP on which relief may be granted.

**AS AND FOR A FOURTH
AFFIRMATIVE DEFENSE**

- 31. In the event that the plaintiff and/or Jaguar had not or has no title or interest in the shipment that is the subject of this action, then the plaintiff and/or Jaguar is not the real party in interest and is not entitled to maintain this suit.

**AS AND FOR A FIFTH
AFFIRMATIVE DEFENSE**

- 32. In the event that said shipment moved subject to any statutory or contractual limitations of liability, either specifically agreed to or contained in any applicable

tariffs and/or governing publications, the plaintiff and/or Jaguar may not recover in excess of such limitations.

**AS AND FOR A SIXTH
AFFIRMATIVE DEFENSE**

33. Plaintiff's common law claims are preempted by federal law.

**AS AND FOR A SEVENTH
AFFIRMATIVE DEFENSE**

34. The bill of lading, tariffs and classifications and the governing publications do not contemplate responsibility for special damages. To the extent, that plaintiff and/or Jaguar seeks recovery for special damages, UP is not responsible.

WHEREFORE, defendant Union Pacific Railroad Company demands judgment; (1) dismissing Jaguar Cross-Claims with prejudice, together with the costs, disbursements and reasonable attorneys fees; and (2) for such other or different relief as this Court may deem just and proper.

Dated: New York, New York
November 12, 2007

By: /s/ Barry N. Gutterman
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